

REMARKS

The Examiner is thanked for the thorough review of the pending claims.

Claims 1 and 5-10 are rejected under 35 USC §112, second paragraph, as being incomplete for omitting essential steps and, in particular, what method steps are taken if “the first agent is not permitted to trade, the second agent is not permitted to trade, or if the trade does violate the identified rules. To address this rejection, claim 1 has been amended to recite that the trades are inhibited in the identified circumstances. Support for this amendment is found throughout the written description given the control mechanisms and use cases described; thus, for example, the written description recites at page 13, lines 29-30 that “for a given trade to occur [using the disclosed system and method], the trade must satisfy the conditions of all the rules” that have been configured. No new matter has been included, and the Examiner is requested to reconsider and withdraw this rejection.

Claims 1 and 5-10 are objected to because of several informalities identified in paragraph 6 of the Office action. The Examiner is thanked for his helpful suggestions regarding the wording of claim 1, and these suggestions have been adopted. Claim 7 has been amended to change “week period having a specified length” to just a “period having a specified length.” This amendment is believed to address the Examiner’s question. Reconsideration of these objections is requested, as the claims comply with Section 112.

Claims 1 and 5-8 are rejected under 35 USC §102(e) as being anticipated by Narasimhan et al, U.S. Publication No. 2005/0096962. With respect, this rejection is traversed.

While Narasimhan does describe a computer system having a “WorkNet” subsystem 116 that enables workers to bid and trade schedules constrained by “trading deadlines, business rules, work rules, management decisions and/or other rules, policies, etc.” (see [0054], the subject claims provide a specific supervisor interface as well as the configuration of specific rules from that interface. Narasimhan’s disclosure does not provide details of any supervisor provisioning interface, nor does not the publication disclose or suggest at least two of the rules as positively recited in independent claim 1, namely: “a first rule configured by the supervisor and that identifies a maximum number of time units per a given time period for an agent that is permitted to trade a work schedule, and a second rule

configured by the supervisor and that identifies a time period into which a work schedule to be traded must fit into in order to satisfy a trade."¹

Alleged anticipation requires exact correspondence between a subject claim and the teaching of the reference. *Net MoneyIn, Inc. v. Verisign, Inc.*, 545 F.3d 1359, 1369 (Fed.Cir. 2008) ("unless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed"). The Manual of Patent Examining Procedure (MPEP) § 2131, likewise, provides that a "claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. ... 'The identical invention must be shown in as complete detail as contained in the ... claim.'" Although the literal wording need not be found in the reference, the elements must be arranged as required by the claim.

In finding alleged anticipation with respect to the first rule, the Examiner has cited to Narasimhan [0038], but this citation is inapposite. In particular, [0038] is not describing the WorkNet module that facilitates schedule trading in the disclosed system; rather, this paragraph is describing a module called WorkModel (which determines "staffing needs") and a related module called WorkOptimize (which generates "work shifts"). These are the modules that are use for creating work schedules, and they have nothing to do with the WorkNet module. The fact that the WorkOptimize module functions to build work schedules based on "time units" is irrelevant to the question of whether the WorkNet module (the one that handles schedule trading) does so. The claimed subject matter must be disclosed "clearly and unequivocally" in the reference. *In re Arkley*, 455 F.2d 586, 587

¹ Similar wording is found in independent claim 10. This subject matter is disclosed and illustrated in the written description within the context of a Trade Rules display interface (Figure 1) provided for use by a supervisor to configure the trade rules. In particular, a "Fall-in function 110" enables the supervisor to define given time periods (for the assigned schedules) that may be traded. For payroll or other purposes (e.g., avoiding overtime expenses), it is desirable to force trades to occur within a given time window. In addition, the supervisor display enables the supervisor to specify a maximum number of time units (reference numeral 128) per a given time period (reference numeral 130) an agent that is permitted to trade a work schedule. This restriction ensures that employees cannot use the system in a way that causes them to lose their full-time status, or to otherwise create unnecessary enterprise costs (e.g., by increasing overtime).

(CCPA 1972). Importantly, anticipation is not established if, in reading a claim on something disclosed in a reference, it is necessary to pick, choose and combine various portions of the disclosure, which according to the teachings of the reference, are not directly related to each other. *Arkley*, 455 F.2d at 587-88. This is precisely what the Examiner has done here; paragraph [0038] describes processing modules unrelated to the trading function implemented by the WorkNet module and described elsewhere in the reference. Thus, the Examiner has not shown where this particular limitation – “a first rule configured by the supervisor and that identifies a maximum number of time units per a given time period for an agent that is permitted to trade a work schedule” is found in the reference. *It is not present in any of the paragraphs that describe the WorkNet module.* For this reason alone, anticipation cannot be made out. “Absence from the reference of any claimed element negates anticipation.” *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571 (Fed.Cir.1986).

With respect to the second rule, the Examiner cites [0041], [0049-50] and [0054]. These citations also fail to disclose the specific rule itself. Paragraph [0041] concerns the WorkPlan module, which produces worker rosters, so it also has no applicability to the WorkNet trading module at issue. While paragraphs [0049-0050] and [0054] at least relate to WorkNet, the cited paragraphs do not describe the particular requirements recited, namely configuring (in a supervisor interface) “a time period into which a work schedule to be traded must fit in order to satisfy a trade.” While the reference does provide generalized constraint wording in the last sentence of [0054], this is insufficient where, as here, the claim wording is more precise. To anticipate, the prior art reference must describe every limitation in a claim either explicitly or inherently. *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997). Inherent anticipation, however, cannot be based on possibilities or probabilities. *Akamai Tech., Inc. v. Cable & Wireless Internet Serv., Inc.*, 344 F.3d 1186, 1192 (Fed. Cir. 2003) (“A claim limitation is inherent in the prior art only if it is necessarily present in the prior art, not merely probably or possibly present.”); *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (“Inherent anticipation requires that the missing descriptive material is ‘necessarily present,’ not merely probably or possibly present, in the prior art”).

With respect to this second rule, the Examiner has not shown that the constraint is necessarily present in the teaching, which is required to establish inherency.

As noted above, the reference also does not disclose any actual supervisor display interface as positively recited.

5 To establish anticipation, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed.Cir. 2001). For at least the above reasons, Narasimhan does not meet this rigid legal requirement.

Thus, the anticipation rejection is in error and should be withdrawn.

10 Claims 9-10 are rejected under 35 USC §103(a) as being unpatentable over Narasimhan as applied to claims 1 and 5-8, further in view of Official Notice. This rejection also is traversed.

The deficiencies in Narasimhan have been noted. Official Notice is cited solely for the alleged “advance notice requirement” positively recited. Applicant explicitly traverses
15 the Official Notice.

As MPEP § 2144.03(A) points out, Official Notice is permissible only in limited circumstances and should be used sparingly, especially as here where it is being relied upon in a final rejection. More importantly, Official Notice is permissible only for certain types of facts, namely, those that are capable of instant and unquestionable demonstration as being
20 well-known. In particular, Official Notice is only appropriate for facts that are of “notorious character” and that serve to “fill in the gaps” that might exist in the evidentiary showing to support a particular ground of rejection. (See MPEP § 2144.03(A)) The Examiner has not met these requirements.

In particular, providing “advance notice to your supervisor” (as relied upon by the
25 Examiner) is the opposite of what is being claimed; rather claim 9 refers specifically to the supervisor configuring his or her “display to specify the requirement that must be respected before a schedule trade may occur.” This is the supervisor (not the agent) taking an action with respect to a particular display interface. The “advance notice to your supervisor” fact – if that is what it is, and Applicant does not concede this - relates to the agent providing

notice to the supervisor and not the supervisor saying, in effect, “you (the agent) must provide me at least the following advance notice.”

Independent claim 10 identifies “a set of rules that allow work schedules to be traded” but only if all conditions specified in sub-parts (a) through (f) are met. This is clear
5 from the conjunctive “and” added before the last sub-clause. As noted above, at least elements (d) and (e) are absent from Narasimhan, and the Examiner admits that element (f) is absent as well. (See, Office action at paragraph 10). More to the point, the Examiner has not shown how this specific combination of elements is found in the cited art, as Narasimhan only describes general constraint language and not specific rules (let alone these
10 six (6) rules in combination). In determining alleged obviousness, the Examiner is reminded that “every limitation positively recited in a claim must be given effect in order to determine what subject matter that claim defines.” *In re Wilder*, 429 F.2d 447, 450 (CCPA 1970); *See also In re Wilson*, 424 F. 2d 1382, 1385 (CCPA 1970) (“[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art.”).

Rejections based on §103 must rest on a factual basis with these facts being
15 interpreted without hindsight reconstruction of the invention from the prior art. The Examiner may not “resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis.” *In re Warner*, 379 F.2d 10100, 1017 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968). Here, at least elements (d)-(f) are nowhere found
20 in any of the cited references, let alone the combination of the six (6) cited rules.

Accordingly, the subject matter “as a whole” of claim 10 is not found in Narasimhan, taken alone or with any facts that are notoriously well-known. Thus, the rejection of claims 9-10 should be withdrawn.

A Notice of Allowance is requested.

Respectfully submitted,

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